A.F.R. (26)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 202/2●001

Agnu Prasad

Vs.

State of Chhattisgarh

Judgment for consideration

Sd/-
V.K.Shrivastava
Judge

Hon'ble Shri Justice L.C. Bhadoo

Sd/-
L.C.BHADOO
Judge

Post for 27-10-2006

Sd/-

26-10-2006

HIGH COURT OF CHHATTISGARH AT BILASPUR

(Division Bench)

Coram : **Hon'ble Shri L.C. Bhadoo &**
Hon'ble Shri V.K. Shrivastava, JJ

Criminal Appeal No. 202/2001

APPELLANT — Agnu Prasad, s/o. Banju Satnami aged 23 years, resident of village Piparmati, P.S. Chowki Pandatarai (Kunda P.S.), Dist. Kawardha, Chhattisgarh.

Versus

RESPONDENT — State of Chhattisgarh, through Police Station: Kunda, District. Kawardha, CG.

Present :- Shri K.K. Singh, learned counsel for the appellant.

Shri U.N.S. Deo, learned Additional Public Prosecutor with Shri Akhil Mishra, learned Panel Lawyer for the State.

JUDGMENT

(Delivered on 27 October, 2006)

The judgment of the Court was delivered by **Vijay Kumar Shrivastava, J.**

The Additional Sessions Judge, Mungeli, Sessions Division Bilaspur, found the appellant – Agnu Prasad guilty of the offence punishable under Sections 302 and 201 of the Indian Penal Code. The appellant was sentenced to undergo imprisonment for life and Rigorous Imprisonment for three years respectively with fine and default stipulation vide judgment of conviction and order of sentence dated 29-11-2000 passed in Sessions Trial No.358/99.

2) Prosecution version as unfolded during trial, in brief, is that on 24/08/1999 Mohar Das Manikpuri (since deceased) at around 2.00 p.m.

was on way to village Kunda. When Mohar Das reached near the Tube-well, appellant caught him and in order to take revenge on account of previous animosity injured and killed him by throttling and after pouring kerosene oil on his body set the dead body on fire. Cattle feeder Tulsiram who was grazing his goats near that field was inside the field having crop of sugarcane. He heard the cries of Mohar Das. When he came outside the field, he saw the appellant burning the body of Mohar Das with match-sticks. He also saw that the appellant after burning the body of Mohar Das went to his house. He apprised all these facts to Gokaran Das. Gokaran Das gave information to deceased's cousin Sumiran Das. Sumiran Das after narrating the matter to others, along with some of the villagers went to the spot and saw the dead body of his cousin Mohar Das.

3) On 24/08/1999 Sumiran Das lodged merg intimation and first information report at Police Sub-station – Pandatarai. D.P. Tiwari, Sub-Inspector of Police, after recording merg intimation and first information report went to the spot to conduct the inquest and to investigate the crime. After summoning the witnesses and in presence of those witnesses he conducted inquest, prepared inquest report and forwarded the dead body of Mohar Das for autopsy to Primary Health Centre, Pandaria where Dr. V.P. Jaiswal conducted the autopsy. On postmortem, he found that the cause of death was asphyxia due to throttling. He also found postmortem burn and some ante mortem injuries. He describing all the injuries and other factors noted by him during postmortem, prepared autopsy report and along with burnt clothes found on the dead body sent his report to Police Station. During investigation spot map was prepared. On memorandum of appellant container containing some kerosene was recovered and seized. From the spot, burnt articles, earth having smell of

kerosene and plain earth were recovered and seized. Statements of witnesses under Section 161 of the Cr.P.C., have been recorded. Articles recovered were sent to Forensic Science Laboratory, Sagar for chemical examination. Assistant Chemical Examiner after analyzing those articles found presence of kerosene on earth having smell of kerosene, burnt clothes, ash, hair and the liquid found in the container. After investigation charge sheet was led in the Court of Judicial Magistrate First Class, Mungeli, who committed the case to the Court of Sessions for trial.

4) Learned Additional Sessions Judge, framed charge under Section 302 and 201 of the I.P.C. against the appellant, the same was read over and explained to him who abjured the guilt. Although in his examination he did not deny that when deceased Mohar Das was on way to Kunda, at that time he was there at a distance, but his plea was that he was at a long distance near the school. His defence is that Tulsiram has falsely implicated him in this case due to animosity.

5) Learned trial Court relied on the statement of witness Dhanukram (PW/5) who has disclosed in his statement that soon before Mohar Das was killed, he was followed by the appellant and witness Tulsiram (PW/2) who in his statement revealed that he heard the screams of Mohar Das and when he came out from the field, he saw appellant burning the body of Mohar Das and other circumstances held the appellant guilty for committing the offence punishable under Sections 302 and 201 of the IPC and accordingly sentenced him.

6) Dr. V.P. Jaiswal (PW/6) in his statement deposed that he conducted postmortem on the dead body of Mohar Das on 25/08/1999, face, throat, chest, stomach, left forearm, left hand and right fore-arm were found burnt. Burnt found on the body was postmortem. Scorched

scalp hair was also present. He also found the following injuries on his body :

"1) Abrasion 2 x 2 cm on right cheek.
2) Contusion – 1.5 cm x 1 cm on left side of neck.
3) Contusion 2 cm x 1 cm on right side of neck upper portion.
4) Contusion 2 cm x 2 cm below above injury No.3.
5) Contusion 5 cm x 2 cm on right shoulder region.
6) Contusion 4 cm x 4 cm on right pit arm.
7) Abrasion 2 cm x 2 cm on base of right thumb.

7) He further deposed that on internal examination he found congsed trachea and lungs. Cause of death of the deceased was due to throttling and contusion was due to pressure of hand fingers. The death was homicidal in nature. Deceased Mohar Das died due to asphyxia as a result of throttling and his body was burnt after his death. From his cross examination nothing has been elicited which may lead to discredit his statement, therefore, from the medical evidence it has been established that the deceased Mohar Das died as a result of asphyxia due to throttling, his death was homicidal and after his death his dead body was burnt.

8) No one witnessed throttling by appellant, therefore, the case in fact rests on circumstantial evidence available on record. No doubt, conviction can be based solely on circumstantial evidence, but it requires to be tested on touchstone of law laid down by the Hon'ble Apex Court. To convict a person on circumstantial evidence, that evidence must be cogently and firmly established, should be of a conclusive tendency unerringly pointing towards guilt of the accused, when taken together should form a complete chain where there is no escape from the conclusion that within all human probability the crime was committed by

the accused and there should be no room for other hypothesis than that of the guilt of the accused. It is not necessary that countless circumstances should be there, law only requires that even if only one circumstance is present that must be strong conclusive, and incapable of any other hypothesis than that of the guilt of the accused.

9) Dhanukram (PW/5) in his statement has deposed that he saw Mohar Das going towards Kunda. He also saw appellant following Mohar Das having a container in his hand, smell of kerosene oil was coming from the cap of the container. Appellant did not deny the fact in his examination, but gave explanation that he was not following Mohar Das, but was at a quite long distance near the school. Admittedly when Mohar Das was within his vision, he was bound to explain how and who killed Mohar Das and in absence of his explanation, this is a clinching circumstance involving the appellant in the crime.

10) Tulsiram (PW/2) in his statement deposed that at around 2.00 - 2.30 pm when he was grazing his goats near sugarcane field he heard the screams of Mohar Das who was raising alarm "Dowdo Dowdo". He saw the appellant who opened the shirt of Mohar Das and was burning his body. Appellant was also keeping container of kerosene by his side. Thereafter, appellant went to his house. He came to village and apprised Gokaran Das. At his instance, village Kotwar Sumiran Das was called. Gokaran Das apprised him with the facts, who along with Tijau Kewat, Ram Anuj Nai, Maniram Harijan went to the spot and saw dead body of Mohar Das who was wearing shoes and near his body one umbrella was kept that was also burnt. Although this witness has been examined at length, but nothing substantial has been elicited in his cross examination so as to disbelieve his above version.

11) Gokaran Das (PW/9) in his statement deposed that at around 3.0 clock when he was in his house, Tulsiram came and apprised him that Agnu Prasad by pouring kerosene on Mohar Das, set his body on fire. He had seen him burning Mohar Das. He called village Kotwar Sumiran Das and asked him to verify. Village Kotwar Sumiran Das went to the spot to verify. Sumiran Das (PW/1)) in his statement deposed that at 2.00 – 3.00 clock Tulsiram from the house of Gokaran Das called him, therefore, he went there. Tulsiram apprised him that Agnu by pouring kerosene oil on Mohar Das set the body on fire. He along with others went to the spot where they found the dead body of Mohar Das who was burnt and smell of kerosene was present there. Statements of both these witnesses do not suffer from such infirmity which may discredit their evidence. Therefore, the statements of both these witnesses corroborate the fact that Tulsiram soon after witnessing the incident came and apprised the villagers. Merg intimation (Ex.P/1) and first information report (Ex.P/2) have been proved by SumiranDas (PW/1) and D.P. Tiwari (PW/10). Both these documents also corroborate the oral statements of the aforesaid witnesses.

12) One umbrella, one small towel, burnt clothes found below the dead body and ash have been seized vide Ex.P/19. From the spot earth having smell of kerosene and plain earth have been seized vide seizure memo Ex.P/20. Clothes found on the body of deceased Mohar Das have been collected vide Ex,.P/14. Exs,.P/19 & P/20 have been proved by the statement of D.P. Tiwari (PW/10). Ex,P/14 has been proved by the statement of Kunjlal (PW/8). All these articles have been sent to FSL, Sagar vide Ex.P/22 and report (Ex.P/23) thereof has been received. This fact has been proved by D.P. Tiwari (PW/10). From Ex.P/23,

presence of kerosene on the earth recovered from the spot, burnt clothes of the deceased and ash have been proved. All these facts clearly established that the body was burnt by pouring kerosene oil.

13) Aforesaid ocular and documentary evidence and circumstances are reliable and trustworthy. Above evidence and circumstances when taken cumulatively, form a complete chain, and that chain unfolded and proved that appellant followed Mohar Das, when found him in a lonely place, caught him and caused his death by throttling and after his death to screen himself from legal punishment caused disappearance of evidence of offence by pouring kerosene on dead body of Mohar Das and setting it on fire.

14) We are of the considered opinion that learned trial Court correctly appreciated the evidence on record and held the appellant guilty for committing the offence punishable under Sections 302 and 201 of the Indian Penal Code and accordingly sentenced him, therefore, no interference in the impugned judgment of conviction and order of sentence passed by the trial Court is called for by this Court under its appellate jurisdiction.

15) In the result, the appeal being devoid of merit is liable to be dismissed and is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
V.K.Shrivastava
Judge

Raju